***THE HONOURABLE SRI JUSTICE B. SUDERSHAN REDDY**

AND

THE HONOURABLE SRI JUSTICE RAMESH RANGANATHAN

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+ WRIT PETITION No. 13970 OF 2005

% 19-08-2005

M/s. Sridhar Lime Products, Piduguralla, rep.,by its proprietor, Sriram Kasi Viswanadham, S/o Chenchaiah, aged about 53 years.

PETITIONER

VS.

$ The Deputy Commissioner of Commercial Taxes, No.II, Division, Guntur.

RESPONDENT

! Counsel for the Petitioner: MR.M.V.J.K.KUMAR

^ Counsel for the Respondent : MR.K.RAJIREDDY, Spl.S.C.for C.T.

< Gist:

> Head Note:

? CITATIONS:

) 1998(3) SCALE 411

2) AIR 1993 SC 2155

3) 1995 Suppl. (1) SCC 21

4) AIR 1970 SC 150

5) 2000(1) ALL ER 65

6) (2001)1 SCC 182

7) AIR 1987 SC 2386

8) AIR 1973 SC 2701

9) (1993) 2 All ER 724

10) (2002) 1 ALL.E.R. 465

11) (2004) 1 All.E.R. 187

THE HON'BLE SRI JUSTICE B.SUDERSHAN REDDY

AND

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.13970 of 2005

Date: 19.08.2005

Between:

M/s. Sridhar Lime Products, Rep.,by its proprietor, Sriram KASI Viswanadham, S/o Chenchaiah, aged about 53years.Piduguralla.

… Petitioner

and

1. The Deputy Commissioner of Commercial Taxes, No.II Division, Guntur and another.

… Respondent.

THE HON'BLE SRI JUSTICE B.SUDERSHAN REDDY

AND

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.13970 of 2005

JUDGMENT : (Per Sri Ramesh Ranganathan, J)

Can a person, who had earlier appeared as the legal representative of the Government of Andhra Pradesh, (one of the parties to the dispute before the Sales Tax Appellate Tribunal), hear and decide the very same case, as the Deputy Commissioner of Commercial Taxes, (revisional authority), on its remand by the Tribunal for de novo consideration? Is the decision taken or order passed by such a person vitiated by bias? These are the questions, which arise for consideration in this writ petition.

2. Facts, to the extent necessary for the purpose of this writ petition are that, the 1st respondent, vide show cause notice dated 27-1-2005, informed the petitioner that

though the Sales Tax Appellate Tribunal, Andhra Pradesh, Hyderabad (S.T.A.T.) had remanded the appeal in T.A.Nos.1494/99 and batch dated 28-9-2004 for fresh disposal of reassessment, after supplying to the dealers concerned details of extracts of certain relevant documents, since the records were voluminous, the dealers could peruse all the records either personally or along with their authorized representative in the office of the 1st respondent. The petitioner was further informed that a net turnover of Rs.11,66,400/- was liable to be taxed at the rate of 10% and if, after perusing the records, the petitioner had any objection to the said show cause notice, it could file its written objections within seven days from the date of receipt of the notice.

3. In reply to the said show cause notice dated 27-1-2005 the petitioner, in its letter dated 4-2-2005, informed the 1st respondent that in the batch of appeals in T.A.No.1641 of 2001 and batch, Sri K.Radhakrishna Rao, the then Additional State Representative had represented the State of Andhra Pradesh, before the Sales Tax Appellate Tribunal and therefore the self same Sri K.Radhakrishna Rao, the present incumbent to the office of the Deputy Commissioner of Commercial Taxes No.II Division, Guntur, was disqualified from issuing the present show cause notice and proceeding thereafter, or hear the same matter in which he had appeared for one of the parties in the batch of appeals. The petitioner, while requesting that the reassessment proceedings be taken up by some other Deputy Commissioner of Commercial Taxes, informed the 1st respondent that, in view of the infirmities involving principles of natural justice, assessment, pursuant to the show cause notice dated 27-1-2005, may not be proceeded with further.

4. The 1st respondent, while acknowledging receipt of the reply submitted by the petitioner on 14-2-2005, however, proceeded with the matter, confirmed the show cause notice dated 27-1-2005 and directed the assessing authority to give effect to the impugned order dated 21-3-2005 immediately.

5. The main grievance of the petitioner, in this writ petition, is that Sri K.Radhakrishna Rao, had earlier appeared before the Sales Tax Appellate Tribunal, in the very same matter in T.A.Nos.1494/99 and batch which included T.A.No.164/01, as the Additional State representative of the State of Andhra Pradesh. On the matter being remanded by the Tribunal, by order dated 28-9-2004, for *de novo* verification, the very same Sri K.Radhakrishna Rao, as the Deputy Commissioner of Commercial Taxes, Guntur-II, had passed the impugned order dated 21-3-2005. Learned counsel for the petitioner submits that a person who had appeared as an Additional Representative for the State of Andhra Pradesh before the Sales Tax Appellate Tribunal ought not to have heard and decided the matter on its remand and ought to have transferred the said file for consideration to any other Deputy Commissioner of Commercial Taxes. Learned counsel contends that the impugned order dated 21-3-2005 is vitiated by the bias of Sri K.Radhakrishna Rao (1st respondent) and is therefore liable to be set aside.

BIAS: A BASIC RULE OF NATURAL JUSTICE

6. Judges or Quasi Judicial authorities, like people in all walks of life, are not infallible. In the matter of interpretation of statutory provisions or while assessing evidence in a particular case or deciding questions of law or facts, mistakes may be committed bona fide which are corrected at the appellate stage. This explains the philosophy behind the hierarchy of courts. While mistakes committed bona fide are subject to correction in the next higher tier of the judicial hierarchy, an essential requirement of judicial adjudication is that the Judge is impartial and neutral and is in a position to apply his mind objectively to the facts of the case put up before him. If he is pre-disposed or suffers from prejudices or has a biased mind he disqualifies himself from acting as a Judge.

7. **NEMO JUDEX IN CAUSA SUA** - A Judge is disqualified from hearing a case in which he may be, or may fairly be suspected to be, biased. Disqualification of

judicial officers/quasi-judicial authorities, for interest and bias, is based on the fundamental requirement that “it is not merely of some importance, but of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done”, emphasis being placed on the need to maintain public confidence in administration of justice.

8. Bias may be defined as a pre-conceived opinion or a pre-disposition or pre-determination to decide a case or an issue in a particular manner, so much so that such pre-disposition does not leave the mind open to conviction. It is, in fact, a condition of mind, which sways judgments and renders the Judge unable to exercise impartiality in a particular case. (**State of West Bengal v. Shivananda Pathak).**

9. If there are clear indicators that judicial or quasi-judicial proceedings or a decision making process may have been compromised by bias, actual or apparent, this may lead to a decision, that has been reached, being challenged and nullified – The principal issue is not whether the decision itself is legitimate but whether the decision maker ought to have taken the decision in the first place, as the possibility of bias would undetermine its credibility. Even if a person believes that he is acting impartially and in good faith, his mind may be unconsciously affected by improper considerations that affect his judgment.

10. In general the rule against bias looks at the appearance or risk of bias rather than bias in fact, in order to ensure that “justice should not only be done, but should manifestly and undoubtedly be seen to be done”. (**Ratan Lal Sharma v Managing Committee, Dr. Hariram (Co-education) Higher Secondary School; Tilakchand Magatram Obhan Vs. Kamala Prasad Shukla**). It is difficult to prove the state of mind of a person. What has to be seen is whether there were reasonable grounds for believing that he was likely to have been biased. In deciding the question of bias human probabilities and ordinary course of human conduct has to be taken into consideration. (**A.K. Kraipak Vs. Union of India**).

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RULE AGAINST BIAS : ITS SCOPE AND CONTENT:

12. In defining the scope of the rule against bias and its content, at least three requirements of public law are thus in play: The first seeks accuracy in public decision-making, the second seeks the absence of prejudice or partiality on the part of the decision-maker. An accurate decision is more likely to be achieved by a decision-maker who is in fact impartial or disinterested in the outcome of the decision and who puts aside any personal prejudices. The third requirement is for public confidence in the decision-making process. Even though the decision-maker may in fact be scrupulously impartial, the appearance of bias can itself call into question the legitimacy of the decision-making process. In general, the rule against bias looks to the appearance or risk of bias rather than bias in fact, in order to ensure that "justice should not only be done, but should manifestly and undoubtedly be seen to be done." (**Judicial Review of Administrative Action: de Smith, Woolf & Jowell : Fifth Edition**)

FACTORS WHICH MAY GIVE RISE TO BIAS:

13. If it is evident that the decision-making body has made up its mind in advance of the hearing, this will naturally give rise to serious doubts about the validity of the hearing process since any such procedure would be considered to be unfair. It is all too easy for adjudicators to form a view on the basis of a multitude of factors, such as their involvement with an earlier stage in the process.

14. In **LOCABAIL (UK) LTD v BAYFIELD PROPERTIES LTD** the Court of Appeal held:-

"It would be dangerous and futile to attempt to define or list the factors, which may or may not give rise to a real danger of bias. Everything will depend on the facts, which may include the nature of the issue to be decided. We cannot, however, conceive of circumstances in which an objection could be soundly based on the religion, ethnic or national origin, gender, age class, means or sexual orientation of the judge. Nor, at any rate ordinarily, could an objection be soundly based on the judge's social or educational or service or employment background or history, nor that of any member of the judge's family; or previous political associations; or membership of social or sporting or charitable bodies; or Masonic associations; or previous judicial decisions; or extra-curricular utterances (whether in textbooks, lecturers, speeches, articles, interviews, reports or responses to consultation papers); or previous receipt of instructions to act for or against any party, solicitor or advocate engaged in a case before him; or membership of the same Inn, circuit, local Law Society or chambers. By contrast, a real danger of bias might well be thought to arise if there were personal friendship or animosity between the judge and any member of the

public involved in the case; or if the judge were closely acquainted with any member of the public involved in the case, particularly if the credibility of that individual could be significant in the decision of the case; or if, in a case where the credibility of any individual were an issue to be decided by the judge, he had in a previous case rejected the evidence of that person in such outspoken terms as to throw doubt on his ability to approach such person's evidence with an open mind on any later occasion; or if on any question at issue in the proceedings before him the judge had expressed views, particularly in the course of the hearing, in such extreme and unbalanced terms as to throw doubt on his ability to try the issue with an objective judicial mind; or if, for any other reason, there were real ground for doubting the ability of the judge to ignore extraneous considerations, prejudices and predilections and bring an objective judgment to bear on the issues before him. The mere fact that a judge, earlier in the same case or in a previous case, had commented adversely on a party or witness or found the evidence of a party or witness to be unreliable, would not without more found a sustainable objection. In most cases, we think, the answer, one way or the other, will be obvious. But if in any case there is real ground for doubt, that doubt should be resolved in favour of recusal. We repeat; every application must be decided on the facts and circumstances of the individual case. The greater the passage of time between the event relied on as showing a danger of bias and the case in which the objection is raised, the weaker (other things being equal) the objection will be"

15. In **Kumaon Mandal Vikas Nigam Ltd. V. Girja Shankar Pant**The Supreme Court, while recorded its concurrence with the view expressed by the Court of Appeal in Locabail's case, held that the surrounding circumstances must and ought to be collated and necessary conclusions drawn there from.

16. Where there has been previous involvement in the case by a person, who should be unbiased, then the appearance of bias may be created. Any indication that an adjudicator has prejudged the case, or any indication that he may do so, will normally disqualify him. Disqualification for bias may exist where a decision-maker has an interest in the issue by virtue of his identification with one of the parties, or has otherwise indicated partisanship in relation to the issue.

TESTS TO DETERMINE BIAS:

17. In deciding the key question of what degree of suspicion determines when a decision should be set aside, on grounds of bias, courts have developed different tests which were considered as alternatives.

18. On the one hand, there is an investigation of the real likelihood of bias. This addresses the issue whether, given the circumstances, there is a real chance that the claimed conflict of interest might have had some effect on the decision-making

process that in fact took place. As to the test of likelihood of bias, what is relevant is the reasonableness of the apprehension in that regard in the mind of a party to the proceedings. The proper approach for the Judge is not to look at his own mind and ask himself however honesty, " am I biased" ?, but to look at the mind of the party before him. (**Ranjit Thakur Vs. Union of India**). The "Real likelihood " test focuses on the Court's own evaluation of the probabilities of bias.

19. On the other hand, reasonable suspicion puts the test onto a somewhat higher plane. The idea here is that if any reasonable person would so much as suspect that bias might arise because of the conflict of interest, this will be enough to satisfy the test. The reviewing authority is required to make a determination, on the basis of the whole evidence before it, whether a reasonable man would, in the circumstances, infer that there is a real possibility of bias. The court must look at the impression which other people have. This follows from the principle that justice must not only be done but must be seen to be done. If right minded persons would think that there is a real likelihood of bias on the part of a judge or a quasi-judicial authority, he must not conduct the proceedings – there must exist circumstances from which reasonable men would think it probable or likely that the judge/quasi-judicial authority would be prejudiced. The court will not enquire whether he was really prejudiced. If a reasonable man would think on the basis of existing circumstances that he is likely to be prejudiced, that is sufficient to quash the decision. (**S. Parthasarathi Vs. State of A.P.**). The "reasonable suspicion" test looks mainly to outward appearances.

20. The test to be applied for determining bias was substantially standardized by the House of Lords in **R v Gough** wherein it was held that, after ascertaining all the relevant circumstances, the correct test to be applied was whether there was a 'real danger' that the appellant had not had a fair hearing. This meant deciding whether there was a real danger in the sense of a real possibility, but less than a probability, of bias on the part of the member of a Tribunal. It was held to be unnecessary, in formulating the test of bias, to look at the matter through the eyes of the reasonable man, because the court personifies the reasonable man in such cases. It was also pointed out that the test is not concerned with the actual state of mind of the person who is alleged to be biased, as bias is insidious and may not be present in the conscious mind. Public confidence demanded that justice had to be seen to be done. This meant that the court should examine all the necessary material so as to be satisfied that there was no danger that the alleged bias had created injustice.

21. The House of Lords in **Porter Vs. Magill** suggested a modest adjustment of the test prescribed in **R Vs. Gough** (9 supra) and held that the Court must first ascertain all the circumstances which have a bearing on the suggestion that the judge was biased and must then ask whether those circumstances would lead of a fair minded and informed observer to conclude that there was a real possibility, or a real danger, the two being the same, that the Tribunal was biased and that the question to be considered was whether the fair minded and informed observer, having considered the facts, would conclude that there was a real possibility that the Tribunal was biased.

22. The House of Lords in **Lawal Vs. Northern Spirit Ltd** took note of the small but important shift provided in **Porter's** case (10 supra), which has as its core the need for "the confidence which must be inspired by the courts in a democratic society and held that public perception of the possibility of unconscious bias was the key, that it was unnecessary to delve into the characteristics to be attributed to the fair-minded and informed observer, what could confidently be said is that one is entitled to conclude that such an observer would adopt a balanced approach, and that 'a reasonable member of the public is neither complacent nor unduly sensitive or suspicious'.

Now to the case on hand:

23. The impugned order dated 21-3-2005 was passed by Sri K.Radhakrishna Rao as the Deputy Commissioner of Commercial Taxes, Guntur II consequent upon the matter being remanded for de novo verification by the Sales Tax Appellate Tribunal in T.A.No.1494/99 and batch which included T.A.No.164 of 2001. Sri K.Radhakrishna Rao had appeared, as the Additional State representative of the State of Andhra Pradesh in T.A.No. 1494 of 2001 and batch before the Sales Tax Appellate Tribunal. Having appeared for one of the parties in a lis before the Sales Tax Appellate Tribunal, Sri K.Radhakrishna Rao ought not to have either heard or decided the same matter as the Deputy Commissioner of Commercial Taxes and should instead have transferred the case to another officer. The question is not whether Sri K.Radhakrishna Rao had predetermined the issue for he may well have considered the case dispassionately. The test is whether a fair minded and informed observer, having considered the facts, would have concluded that there was a real possibility of Sri K.Radhakrishna Rao being biased. We have no doubt in our mind

that such would undoubtedly have been the conclusion reached by a fair minded and informed observer.

24. In the present situation where the petitioner herein had specifically requested that he not proceed further in the matter, Sri K.Radhakrishna Rao should have recused and not proceed further more so, as held in **Loco Bail** (5 supra) and **Kumaon Mandal** (6 supra), since his involvement at an earlier stage of the same proceedings, gives rise to a real ground for doubting his ability to bring an objective judgment to bear on the issues before him. The impugned order dated 21.03.2005 is vitiated by bias and is set aside. The Commissioner of Commercial Taxes shall entrust the matter to any other Deputy Commissioner, Commercial Taxes in Guntur Region, other than Sri K.Radhakrishna Rao, to hear and decide the matter afresh from the stage after the order of remand dated 28.09.2004 passed by the Sales Tax Appellate Tribunal.

25. The Writ petition is accordingly disposed of. There shall be no order as to costs.

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B.SUDERSHAN REDDY,J

Date: .08.2005

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RAMESH RANGANATHAN,J

ASP

After pronouncement of the judgment, learned Special Standing Counsel submits that there are only two Deputy Commissioners, Commercial Taxes stationed at Guntur and interests of justice requires that choice may be given to the Commissioner of Commercial Taxes for making over these cases to any other Deputy Commissioner, Commercial Taxes of his choice.

We find substance in the submission. We accordingly direct the Commissioner of Commercial Taxes to make over the proceedings to any other Deputy Commissioner, Commercial Taxes of his choice.

(B. Sudershan Reddy, J)

19.08.2005

(Ramesh Ranganathan, J)

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Note: L.R.copy to be marked

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